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February 26, 2001

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Washington, D.C. 20554

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Salas:

On behalf of the Competitive Universal Service Coalition ("CUSC"), I am submitting CUSC's Further Comments on the Rural Task Force Recommendation. These Further Comments are filed in response to the Further Notice of Proposed Rulemaking in the above-referenced proceeding, FCC 01-8, released Jan. 12, 2001.

If you have any questions, please contact me.

Respectfully submitted,

David Sieradzki

David L. Sieradzki
Counsel for the Competitive Universal Service Coalition

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

COMPETITIVE UNIVERSAL SERVICE COALITION FURTHER COMMENTS ON THE RURAL TASK FORCE RECOMMENDATION

COMPETITIVE UNIVERSAL
SERVICE COALITION

Association for Local Telecommunications Services
AT&T Wireless Services
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Nucentrix Broadband Networks, Inc.
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Its Attorneys

February 26, 2001

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EXECUTIVE SUMMARY

The Competitive Universal Service Coalition ("CUSC") generally supports the RTF recommendations, which will advance the goal of competitive neutrality and will prevent excessive growth in the size of the fund. CUSC filed comments last fall supporting the RTF plan and suggesting minor modifications to the plan; a brief summary of those comments follows this page. In these comments, CUSC submits responses to the specific implementation questions raised by the Federal-State Joint Board and by the Commission.

First, the Commission should reject the proposed "safety valve" adjustment that would permit increases to the amount of funding in study areas where fund levels would otherwise be fixed. If such a mechanism is authorized, it should recover no more than 10 to 20 percent of a carrier's incremental "meaningful investments." In addition, other limitations should be imposed on this adjustment.

Second, there should be *no* increase in fixed funding levels to support the cost of catastrophic events. Rural ILECs and other eligible telecommunications carriers should rely on commercially available insurance, RUS loans, and federal and state emergency management relief funding to deal with catastrophic events.

Third, rural ILECs should not expect to recover their investments from other carriers' subscribers via the high-cost fund, and for this reason there should be no "safety net additive" when one ILEC purchases study areas or exchanges from another ILEC. Moreover, such a mechanism would give carriers a perverse incentive to defer regular investments in network maintenance and upgrades.

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- ***Competitive and Technological Neutrality:*** Adhering to these established principles is more important now than ever.

- ***Size of Fund:*** CUSC generally supports the RTF plan, and opposes the rural ILECs' proposed changes (including those in the MAG plan) that would substantially increase the overall size of the fund.

  - ***Retain Constraints on Growth of the Fund***, with RTF recommendations as a ceiling. "Safety net additives," catastrophic event adjustments, and the like may be unnecessary, or if allowed must be carefully controlled.

  - ***No Artificial Incentive to Sell Exchanges:*** Retain § 54.305, with strict limits on any additional "safety valve" funding. Carriers purchasing exchanges should recover their investments from their own customers, not the USF. New study areas created by sales of exchanges must not be treated as "rural telcos" for ETC designation or service area purposes.

- ***Disaggregation and Targeting of Support***: CUSC generally supports disaggregation of rural ILEC study areas – with three caveats:

  - ***Reduce Gamesmanship:*** Disaggregation plans may be proposed by ILECs or by competitive ETCs. Such plans must either be approved by state commissions, or must comply with clear criteria that ensure that such plans are demonstrated to be cost-based using publicly verifiable data.

  - ***Transparency:*** No disaggregation below the wire center level without state approval based on a public proceeding and detailed cost information.

  - ***Competitive Neutrality:*** The same disaggregated study areas must govern competitive ETC "service areas" as well as distribution of funding.

- ***Competitive ETC Issues:*** Adopt the RTF's pro-competitive recommendations:

  - ***Eliminate the Funding Lag:*** Clarify the rules and shorten the interval between the provision of service and receipt of universal service funding.

  - ***Transparency:*** Publicize, in an easy-to-use format, the per-line amount of support available in each geographic location.

  - ***Change in Funding Rules:*** The funding formula change triggered by competitive entry must not be a basis for denying ETC designation.

  - ***Service Locations:*** Wireless customers' residential or business locations should determine their geographic locations for support purposes.

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Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
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COMPETITIVE UNIVERSAL SERVICE COALITION
FURTHER COMMENTS ON THE
RURAL TASK FORCE RECOMMENDATION

The Competitive Universal Service Coalition ("CUSC") hereby submits its comments on the Further Notice of Proposed Rulemaking seeking comment on the recommendations of the Federal-State Joint Board and the Rural Task Force ("RTF") regarding reform of high-cost universal service in rural ILEC service areas. 1/

CUSC commends the RTF's efforts to craft a compromise among divergent interest groups, and generally supports the RTF's recommendations. CUSC believes that the RTF plan largely advances the objectives of making universal service funding competitively neutral, while avoiding excessive growth in the size of the fund. In reply comments filed in the Joint Board proceeding on the

1/ *Federal-State Joint Board on Universal Service,* Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 01-8 (released Jan. 12, 2001) ("FNPRM"), seeking comment on *Federal-State Joint Board on Universal Service,* Recommended Decision, CC Docket No. 96-45, FCC 00J-4 (released Dec. 22, 2000) ("Joint Board Recommended Decision"); *see also* Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service (adopted Sept. 22, 2000) ("RTF Recommendation").

RTF plan, CUSC generally supported the RTF's proposals, but suggested a few minor modifications to the plan. CUSC demonstrated that the Commission should:

(1) reject rural ILEC proposals that would substantially increase the overall size of the fund;

(2) carefully oversee the details of how rural ILECs' study areas are disaggregated, to ensure that disaggregation plans do not unreasonably disadvantage competitive entrants; and

(3) adopt the RTF's pro-competitive recommendations, such as those to eliminate the funding lag and to increase the transparency of the high-cost fund.

CUSC continues to urge the Commission to adopt the proposals in those reply comments, which are attached as Appendix A.

CUSC's earlier comments address the FNPRM's general questions regarding the public policy implications of the RTF Recommendation, including the effects of the plan on the competition and universal service goals of the 1996 Act, and how it would affect small business entities such as new entrants. 2/ CUSC's views on the most important policy issues raised by the RTF Recommendation are contained in those reply comments. In these further comments, CUSC responds specifically to the questions about specific implementation issues raised in the FNPRM and the Joint Board Recommended Decision. 3/

2/ FNPRM, ¶ 4.

3/ *Id.*, ¶¶ 5-7; Joint Board Recommended Decision, ¶¶ 16-20.

I. THE COMMISSION SHOULD IMPLEMENT THE RTF'S RECOMMENDATIONS IN A COMPETITIVELY NEUTRAL MANNER THAT WILL AVOID BLOATING THE FUND.

A. The "Safety Valve" Mechanism for Acquired Exchanges Should Be Eliminated Or Narrowly Restricted.

The universal service rules should not create artificial and uneconomic incentives for ILECs to sell exchanges to smaller carriers. 4/ Moreover, in a newly competitive environment, universal service support should be limited to the amount necessary to support universal service and should not be used as a vehicle to guarantee that ILECs recover their investments. For these reasons, CUSC strongly supports retaining Section 54.305 of the Commission's rules, which provides that carriers acquiring ILEC exchanges will receive the same universal service high-cost funding that the selling carrier would have received, and agrees with the RTF recommendation to retain that rule with minor modifications.

CUSC submits that, ideally, there should be *no* "safety valve" adjustment to the universal service support received by purchasing carriers. First, carriers should be expected to recover all of their investments from their own subscribers, not from other carrier's subscribers via the high-cost fund. Second, the

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4/ Under the RTF's "safety valve" mechanism, exchanges that one ILEC sells to another could well be designated as new "rural telephone company" study areas for funding purposes. But, as discussed in CUSC's previously filed reply comments, such study areas should not be treated as "rural" for ETC designation purposes. This would ensure that exchange sales do not affect preexisting designations of competitive ETCs, and that they do not trigger a need for competitive carriers that have applied for or received ETC designation to make rural "public interest" showings to serve the transferred area. *See* CUSC Reply Comments (Appendix A hereto), pp. 17-18.

existence of a "safety valve" adjustment would give carriers that are considering selling exchanges a perverse incentive to cease investing in or upgrading the networks in those exchanges, in order to increase the "safety valve" funding that a prospective acquirer could expect to receive.

If any "safety valve" is allowed, it must be strictly limited. First, while CUSC agrees with many components of the example (not necessarily endorsed by the RTF) of how the "safety valve" mechanism might work, included as Appendix D to the RTF Recommendation, we strongly disagree with that example's suggestion that universal service funding should cover 50 percent of the incremental investments made by acquiring carriers that acquire exchanges. A much more limited proportion of incremental "meaningful investments" should be subsidized – preferably, no greater than 10 to 20 percent. 5/ In addition, CUSC submits the following answers to the related questions posed by the FNPRM and the Joint Board:

1. "How should safety valve support be distributed if the total amount of support for which rural carriers are eligible exceeds the proposed cap of five

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5/ By comparison, the proposed "Broadband Internet Access Act of 2001" introduced in the House of Representatives as H.R. 267 by Rep. English and others on Jan. 30, 2001, and in the Senate as S.88 by Sen. Rockefeller and others on Jan. 22, 2001, would provide a tax credit for 10 to 20 percent of qualified expenditures on broadband Internet access capability in certain low income and rural areas. CUSC believes that a tax credit would be a far superior means to support such expenditures, and submits that the safety valve mechanism should be removed from the universal service rules in the event such a tax credit is enacted.

percent of the high-cost loop support fund?" 6/ The safety valve support provided to all carriers receiving such funding should be reduced proportionally until the total amount reaches the cap.

2. "How should 'meaningful investment' be defined for purposes of safety valve support?" 7/ To demonstrate eligibility for "safety valve" support, a purchasing carrier should be required to demonstrate that it has made "meaningful investments" that satisfy both of the following criteria. First, the investment must be directly attributable to introduction of a new service or customer functionality that the selling carrier did not offer (*e.g.*, high-speed broadband service to residential customers). Second, the investment, measured in terms of capital expenditures in telecommunications network equipment, must be at least 50% greater than the comparable amount of investment during a "base year" (*i.e.*, a year prior to the announcement of the agreement to acquire the exchanges).

3. "Should a carrier's safety valve support transfer to a different carrier as a result of a subsequent transfer of exchanges?" 8/ CUSC is concerned that permitting such transfers from one carrier to another could create uneconomic incentives for a purchasing carrier to quickly "flip" an exchange to a subsequent purchaser, which would not serve the public interest. In any event, if such

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6/ FNPRM, ¶ 5.

7/ *Id.*

8/ *Id.*

transfers are allowed, a subsequent purchaser should be required to make "meaningful investments" over and above the first purchaser's investments (*i.e.*, measured in comparison with the first purchaser's investments) in order to qualify for any additional safety valve funding.

4. "Should safety valve support be fixed in competitive study areas in the same manner as other high-cost loop support, or would such an approach unduly dissuade investment?" 9/ As with other types of high-cost funding, safety valve support should be fixed in study areas where a competitive ETC has entered the market and begun receiving support. Competition should be a sufficient incentive for acquiring carriers to make capital improvements to their networks; no additional universal service funding should be required under those circumstances.

B. Fixed Per-Line Support in Competitive Exchanges Should Not Be Subject to Adjustment Due To Catastrophic Events.

CUSC agrees with the RTF recommendation to freeze support in study areas once a competitive ETC has received designation and has begun receiving federal universal service support. We submit the following responses to the FNPRM's specific questions regarding the implementation of this "freeze."

1. "We seek comment . . . on the relationship of the cap on high-cost loop support to fixed per-line support in competitive study areas." 10/ The RTF proposes that per line support in competitive study areas would grow by the same

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9/ *Id.*

10/ *Id.*, ¶ 6.

rate as the national Rural Growth Factor ("RGF"), which in turn is based on the inflation rate plus the percentage change in the number of lines. Therefore, the lines from both ILECs and competitive ETCs in competitive study areas should be included in the formula used to derive the national RGF.

2. "We also seek comment on whether the proposed ability of incumbent LECs to adjust their fixed per-line support levels to recover costs associated with catastrophic events should be limited by the availability of support from other sources, such as insurance, Rural Utilities Service loans, and federal or state emergency management relief." 11/ CUSC submits that, due to the availability of these alternative sources of funding to deal with catastrophic events, there should be *no* catastrophic event adjustment to fixed universal service funding. Any such adjustment would provide a strong disincentive for carriers to obtain commercially reasonable amounts of insurance in anticipation of possible catastrophic events. If such an adjustment is provided, it must specify that any funding will be offset by the amount of aid from other sources.

C. The "Safety Net Additive" Should Be Eliminated Or Narrowly Restricted.

CUSC opposes the proposed "safety net additive." Like the "safety valve adjustment" discussed above, such an adjustment would perpetuate the unfortunate notion that rural ILECs can expect to recover their investments from

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11/ *Id.*

other carriers' subscribers via the high-cost fund. Particularly in an increasingly competitive marketplace, all carriers must expect to recover all of their investments from their own subscribers. Moreover, the existence of a "safety net additive" would give carriers a perverse investment to defer regular investments in network maintenance and upgrades. This is because they would receive a much greater benefit through the "safety net additive" if they deferred investments for many years and then suddenly invested large amounts in an upgrade during a single year. Thus, to protect ratepayers of rural ILECs, the Commission should reject the RTF's proposed "safety net additive."

The FNPRM asks, "As proposed, would the safety net additive mechanism enable rural carriers to recover more than 100 percent reimbursement on their incremental loop investment? If so, how should the mechanism be modified?" 12/ CUSC submits the possibility of such dramatic over-recovery does exist. To preclude this outcome, and to minimize the extent to which the universal service rules distort carriers' investment incentives, CUSC submits that any safety net additive mechanism should have a carrier-specific cap that precludes any carrier from recovering more than 20% reimbursement on its incremental loop investment.

12/ *Id.*, ¶ 7.

CONCLUSION

In conclusion, CUSC urges the Commission to adopt most of the RTF's recommendations, and to reject the proposals submitted by some ILECs to dramatically expand the size of the fund and to eliminate pro-competitive features of the plan. Nonetheless, CUSC suggests that the Commission must take care to implement the plan in a manner that promotes the overall objectives of competitive neutrality and efficiency. To that end, the Commission should impose strict controls on the process of disaggregating rural ILECs' study areas (as set forth in our earlier reply comments). CUSC also submits that the Commission should eliminate or significantly restrict any funding increases due to the "safety valve," "catastrophic event adjustment," or "safety net additive" mechanisms recommended by the RTF.

Respectfully submitted,

COMPETITIVE UNIVERSAL SERVICE COALITION

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COMPETITIVE UNIVERSAL SERVICE COALITION REPLY COMMENTS ON THE RURAL TASK FORCE RECOMMENDATION

COMPETITIVE UNIVERSAL
SERVICE COALITION

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November 30, 2000
CORRECTED VERSION: December 11, 2000

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EXECUTIVE SUMMARY

The Competitive Universal Service Coalition ("CUSC") applauds the efforts of the Rural Task Force ("RTF") in bringing together varied and competing interests and forging a solid compromise proposal. CUSC is eager to work with the Joint Board and the Federal Communications Commission to craft rules that are consistent with the following fundamental principles:

1. The universal service funding structure must be competitively neutral and must allow competitive entrants to serve rural, high-cost communities currently served by rural telephone companies.
2. The universal service fund must be targeted and economically efficient, and must not be allowed to grow to an excessive amount that would place an undue burden on consumers.

Toward these goals, CUSC supports adoption of the RTF's recommendations as a package. CUSC submits that the Joint Board and the Commission should reject parties' arguments for changes to the RTF proposals that would violate these principles, but in light of these arguments, CUSC submits a few suggestions of its own for minor modifications to the RTF proposal.

First, CUSC generally supports disaggregation of rural telephone companies' study areas and targeting of support. But it will be absolutely critical for regulators to carefully oversee the details of how disaggregation is implemented to ensure that incumbent carriers do not abuse the process to cross-subsidize their own services and freeze out competitive entry.

Second, CUSC strongly supports the RTF's pro-competitive recommendations to: (1) eliminate the funding lag for competitive eligible tele-communications carriers ("ETCs"); (2) enable all parties to easily determine how much funding per line is available in each geographic location: and (3) fund wireless ETCs based on their customers' residential or business locations. Similarly, the RTF proposal must *not* be implemented in ways that create new impediments to competitive entry. Thus, states must not be permitted to rely on the change in funding methodology triggered by competitive entry as an excuse to deny ETC designation. Moreover, the FCC rules on ETC criteria must not be expanded to include unwarranted requirements relating to advanced or information services.

Finally, to protect consumers around the country from excessive universal service contribution burdens, the overall size of the high-cost fund must not be allowed to grow by more than the amount recommended by the RTF. Thus, rural incumbents' arguments for potentially vast increases in universal service funding upon the sale of rural exchanges must be rejected. The Commission must also structure "High Cost Fund III" in a manner that removes implicit subsidies from rural ILECs' access charges and makes all funding explicit and portable, but does not give rural ILECs an unwarranted revenue guarantee, which would be improper in an increasingly competitive environment.